EXHIBIT A

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481-rdd

- -x

In the Matter of:

DPH HOLDINGS CORP., ET AL.,

Debtors.

- -x

MODIFIED BENCH RULING

U.S. Bankruptcy Court

300 Quarropas Street

White Plains, New York

March 18, 2010

10:12 AM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

Transcribed by: Dena Page

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P R O C E E D I N G S

THE COURT: I have before me a claim objection by DPH Holdings Corporation, which is the successor through the confirmed and effective Chapter 11 plan for Delphi Corporation and its affiliated debtors and debtors in possession with regard to claims asserted against those entities. It has objected to proofs of claim filed by the IAM, IBEW and IUOE, all unions or union locals representing former workers for the debtors who were covered by the Delphi HRP, or Delphi pension plan. I'll sometimes refer to these unions as the splinter unions. That's just a colloquial term to distinguish them from the UAW, the United Steelworkers, and the IUE, who in the aggregate represent far more of the debtors' former employees.

The objection originally addressed several claims by the splinter unions. Based on the initial hearing on the claim objection and the unions' response, I asked the parties for further briefing. The first issue that I asked to be briefed has now been completely clarified. It is now clear, and the unions so acknowledge, that the only claims that they are proceeding on at this point (having acknowledged that they have no other disputed claims) are claims that they have asserted for the reduction in their members’ recovery of pension benefits under the HRP -- or the so-called nonguarantied claim portion of their pension benefits.

By the “nonguarantied claim portion,” I mean the

following. The Delphi HRP was terminated and taken over by the PBGC. Under ERISA, the PBGC is responsible for paying amounts to the pension beneficiaries. The three unions seek to have allowed their claims against Delphi for the amounts owed to their members as beneficiaries of the terminated pension plan that exceed the amounts that will be paid by the PBGC.

The unions assert two separate grounds, or alternative grounds, for these claims.

First, they contend that the debtors' termination of the pension plan and the subsequent creation of the benefit reduction claims, or the nonguaranteed claims, violates their respective collective bargaining agreements and, therefore, gives rise to a breach claim.

Secondly, they assert, or alternatively they assert, that the agreement by Delphi with the PBGC and GM in respect of the treatment of the Delphi HRP, which fixed the PBGC's claim under ERISA against the debtors in respect of the pension plan for termination liability and facilitated the agreement by GM to backstop any unpaid, nonguarantied plan benefits for certain beneficiaries of the plan -- namely the beneficiaries who were members of the UAW (and the recognition of the possibility of GM doing the same for other beneficiaries -- namely the beneficiaries represented by the United Steelworkers and the IUE), constituted a breach of fiduciary duty by Delphi in its capacity as a pension plan fiduciary.

The debtors have raised numerous grounds for objecting to these claims. The first ground, and I will focus now on the unions' contract claim, is that under ERISA as amended post-1986, the PBGC has been given sole control over the liability of an employer/sponsor, such as the debtors, in respect of a pension plan, such as the Delphi HRP, and that such liability is owed uniquely to the PBGC. And, in particular, it is not owed under Section 301 of the LMRA or assertable by a union, notwithstanding the existence of a collective bargaining agreement that requires the payment of such benefits.

The case law on this issue, I believe, is clear and convincing that the debtors' position is correct. The leading case is United Steelworkers of America v. United Engineering, Inc., 52 F.3d 1386 (6th Cir. 1995), which discusses the state of the law prior to the amendments to ERISA, in which the courts, including the Sixth Circuit as well as the Second Circuit, had filled in what they perceived to be a gap in ERISA that enabled other parties, including unions, to assert a pension underfunding claim against the employer/plan sponsor. As discussed in the United Engineering case, it appears clear that Congress, aware of such case law, amended ERISA in 1986 so that employers would be liable only to the PBGC for the total amount of unfunded pension benefit liabilities of a terminated plan.

So, based on the United Steelworkers case and cases it

cites, including In re Adams Hard Facing Company, 129 B.R. 662 (W.D. Okla. 1991), and International Association of Machinists and Aerospace Workers v. Rome Cable Corporation, 810 F. Supp. 402 (N.D.N.Y 1993), as well as the subsequent case of In re Lineal Group, 226 B.R. 608 (Bankr. M.D. Tenn. 1998), I believe that the unions' breach of contract claim is preempted by ERISA, or, stated differently, under ERISA only the PBGC has a claim for termination liability.

On the preemption argument, or in response to the preemption argument, the unions point to one case and to a theory; however, having considered both, I am not persuaded. As far as the case is concerned, the unions point to an unreported decision of the Sixth Circuit, Local No. 1654 International Brotherhood of Electrical Workers v. LG Phillips Display Components Company, 137 Fed. Appendix 776 (6th Cir. June 7, 2005), in which the Sixth Circuit recognized that while state law claims for the recovery of employee benefits are always preempted by ERISA, claims involving rights created by collective bargaining agreement are governed by the LMRA and, at least in respect of the facts there at hand, are not superseded by ERISA. The facts at hand in that case, however, involved not a termination of a pension plan and the resulting claim assertable after its takeover by the PBGC for the plan’s underfunding, or deficiency, but, rather, a fraud claim in connection with the sponsor’s negotiations involving the

termination of the plan leading to the agreement of the union to receive their retirement benefits in a lump sum. There was no indication in that case that the retirement benefits would not be paid in full, only a dispute with regard to the factors used in computing the lump sum cash payment. The Sixth Circuit in that unpublished decision recognized the United Steelworkers case and stated, however, that the United Steelworkers case was decided on the narrow ground that ERISA preempted claims for nonguaranteed pension benefits against plan sponsors because ERISA had been amended to provide that plan sponsors were not otherwise liable for nonguaranteed benefits.

The unions would interpret that sentence to state, effectively, that as long as there is a separate basis for a claim for nonguaranteed benefits (in the present case, under the splinter unions' collective bargaining agreements), the claim would not be preempted by ERISA. I do not view that to be correct. I believe that the United Steelworkers case, in fact, involved just such a situation as the present dispute before me and, nevertheless, the Sixth Circuit, I think correctly, held that the claim under Section 301 of the LMRA was preempted -- as is, I believe, also required by the logic of that decision as applied to the present claims of the splinter unions: literally, under ERISA, the debtors are not liable for such claims, except to the PBGC. And so, therefore, when one looks at the terms of the collective bargaining

agreements here, which are set forth in the three MOUs entered into by the respective splinter unions, and Delphi Corporation, paragraph 2(b) of the MOUs states that "Delphi will cause the frozen Delphi HRP to pay benefits in accordance with the terms of the Delphi HRP and applicable law."

"Applicable law" here, as interpreted by the Sixth Circuit based on an apt reading of ERISA, would fix the sponsor's pension liability as it was fixed with the PBGC -- and that would be the claim, a claim, further, assertable only by PBGC.

There is another, separate basis, as well, for disallowing the splinter unions' breach of contract claims. The provision of the MOUs that I just quoted, paragraph 2(b), goes onto say "These benefits will not be reduced from the levels in effect as of the date immediately preceding the effective date of the MOU unless they are similarly reduced for other retired Delphi HRP participants. The IUOE [and this is also as agreed by the other two unions] agrees that Delphi reserves its right to seek termination of the Delphi HRP consistent with applicable law."

Delphi contends that the reservation of rights in the last sentence of paragraph 2(b) recognizes Delphi's right to terminate the HRP and to have the unions' claims be limited to the claim determined by the PBGC, with no additional claim to be assertable by the unions.

The unions contend, to the contrary, that the last sentence of paragraph 2(b) recognizes only a right to terminate the HRP, not a right to be relieved of a claim for breach of the MOUs. As the debtors have pointed out, I have already dealt with this issue to some extent in the context of the splinter unions' objections to the PBGC settlement and the confirmation of the debtors' modified chapter 11 plan, which contemplated the implementation of the PBGC settlement. At that time, in approving the PBGC settlement I found that the debtors were not precluded from entering into the settlement by the splinter unions' collective bargaining agreements. But in that context I did not address, I believe, sufficiently for res judicata or collateral estoppel purposes whether a resulting breach claim had been precluded by the MOUs' own language. At that time, in approving the settlement, I was requested only to find that the settlement was fair and equitable and in the best interests of the debtors and their estates (although I believed that the reduction of the PBGC's termination or deficiency claim under the settlement was consistent with Delphi's obligations under the MOUs, which first recognized the debtors' right to terminate the pension plan and, therefore, the implicit role to be played by the PBGC in fixing the termination claim). Therefore, I do not accept the debtors' reading of the last sentence of paragraph 2(b) or the debtors' argument that the unions are precluded by my earlier rulings

approving the PBGC settlement and confirming the chapter 11 plan from asserting their claims.

As quoted earlier, paragraph 2(b) of the MOUs has a second, critical provision, however, which states that the benefits provided under the Delphi HRP to the unions' members can be reduced if they are similarly reduced for the other Delphi HRP participants. I believe the record is clear that with the termination of the pension plan the benefits under the Delphi HRP were reduced equally, across the board, with regard to all participants and, therefore, the savings provision in the second sentence of paragraph 2(b) applies as an alternative basis to defeat the splinter unions' breach of contract claim.

Again, that sentence reads, "These benefits" ["these" referring to the "benefits under the terms of the Delphi HRP,"]"will not be reduced from the levels in effect as of the date immediately preceding the effective date unless they [the "they" clearly refers to "these benefits"] are similarly reduced for other retired Delphi HRP participants."

The record is clear that upon termination of the Delphi HRP, the benefits paid by the Delphi HRP were paid pro rata, across the board to the beneficiaries of the HRP by means of the PBGC's claim.

The splinter unions argue that, as a result of the PBGC settlement, GM agreed to backstop those amounts that would not be paid out across the board by the Delphi HRP to the PBGC

and from the PBGC to the beneficiaries, but those are GM benefits and not Delphi HRP benefits. So it appears clear to me that under the terms of the applicable MOUs there has not been a breach of the splinter unions' collective bargaining agreements, even if the splinter unions had standing to assert their claims notwithstanding ERISA's preemption of the right to assert the deficiency claim arising upon plan termination.

The second basis for the splinter unions' claims, as I said, is that, not as the employer or plan sponsor but as a plan fiduciary, Delphi is liable for a breach of fiduciary duty to each of the three unions' member beneficiaries. Before discussing the nature of the fiduciary duty that Delphi would have to the beneficiaries of the HRP and the alleged breach of that duty, however, I should first deal with the issue of the unions' standing to pursue such a claim.

The law in the Second Circuit and this district is clear that the right to assert claims for breach of fiduciary duty under ERISA is limited to the specific types of persons or entities listed in Section 502 of ERISA. It is also clear that the unions are not pursuing the breach of fiduciary duty claims as a beneficiary of the Delphi HRP or in any other capacity recognized specifically by section 502 of ERISA. Consequently, the debtor has argued that the unions do not have standing to bring this breach of fiduciary claim under Section 101(5) of the Bankruptcy Code (defining a "claim").

I agree with the debtor's argument that the unions do not have standing to assert their members' alleged breach of fiduciary duty claims under ERISA. It is worth emphasizing that this argument regarding the unions' standing is not premised upon pre-emption, because the unions are correct that a fiduciary duty claim against an ERISA fiduciary is not the same thing as the underfunding or deficiency claim that only the PBGC has standing to pursue against a plan sponsor. It is, rather, based on a separate provision of ERISA, section 502. However, as is clear from the case law, a claim for breach of such a fiduciary duty is limited by section 502 to parties that do not include the unions. See Local 100 Transport Workers Union v. Rosen, 2007 WL 2042511 (S.D.N.Y. July 13, 2007); Toussaint v. J.J. Wiser & Company, 2005 WL 356834 (S.D.N.Y. February 13, 2005); District 65 UAW v Harper & Row Publishers Inc., 576 F Supp 1468 (S.D.N.Y. 1983). See also McCabe v. Trombley, 867 F. Supp. 120 (N.D.N.Y. 1994).

In response, the unions cite The American Medical Association v. United Healthcare Corporation, 2002 U.S. Dist. LEXIS 20309 (S.D.N.Y. October 23, 2002), as well as The American Medical Association v. United Healthcare Corporation, 2003 U.S.Dist. LEXIS 1398 (January 30, 2003), in which Judge McKenna gave standing to, in the first case, the American Medical Association plaintiff and, in the latter case, to, among others, unions, in fiduciary duty breach litigation under

ERISA. However, he did so after having carefully analyzed the factors for associational standing set forth in International Union United Auto Workers v. Brock 477 U.S. 274, 281 (1988). In so doing, he made it clear in both opinions that he granted standing only insofar as the relief sought by the Association or the unions related to claims for injunctive or declaratory relief, as opposed to a damages claim. (I also note that the second order issued by Judge McKenna, which applied to the unions, was, in addition to being limited to that basis, entered expressly without opposition by any party.) Here, as I noted, however, the splinter unions are asserting a claim against Delphi's estate, payable under section 101(5) of the Bankruptcy Code, even if based in equity, in money, which clearly takes the unions out of the ambit of the The American Medical Association decisions.

The unions also rely on Southern Illinois Carpenters' Welfare Fund v. Carpenters' Welfare Fund of Illinois, 326 F.3d 919, (7th Cir. 2003). However, in addition to the fact that the Carpenters' Welfare Fund case, I believe, is not on point with the present facts, it is also contrary to the case law from the Second Circuit that I've previously cited (to the extent it is on point, which, again, I don't believe to be the case).

So, before turning to the merits of the breach of fiduciary duty claim, I conclude that the unions' claims should

be disallowed based on the unions' lack of standing to pursue a right to payment for breach of a fiduciary duty under the foregoing case law and section 502 of ERISA.

This is not an evidentiary hearing; it is a sufficiency hearing and, therefore, is generally governed by a standard akin to -- in fact, on all fours with -- for purposes of the claims resolution process in these cases, the standard under Federal Rule of Civil Procedure 12(b)(6), Twombley and Iqbal. Therefore, I am focusing only on the assertions in the unions' claims and whether they would set forth, if proven, legally feasible claims. I'm not weighing the evidence that might be offered in their support (although, if the claims' assertions simply are not plausible, given the context, in which case I would require the unions to set forth more in their claims or disallow them).

That last wrinkle really doesn't come into play here, however, because of the clarification of the nature of the union's breach of fiduciary duty claim as set forth in the additional briefing and at oral argument. It is now clear that, as far as the breach of fiduciary duty theory goes, the unions contend that Delphi, as a plan fiduciary under the HRP, breached its fiduciary duty essentially in two ways (and again this is with the debtor wearing its hat as plan administrator and not as employer/sponsor or in any other capacity).

First, the unions contend that although Delphi as plan

sponsor agreed, in the PBGC settlement, that the PBGC was entitled to an allowed claim of seven billion dollars in respect of the employer's termination of the pension plan, settlement provided that the PBGC would have an allowed claim against Delphi as plan sponsor of only three billion dollars. The unions contend, therefore, that as plan administrator the debtor left money on the table for itself as plan sponsor rather than having it be allocated to pay a larger claim, and, therefore, in essence, that it was self-dealing.

Secondly, the unions contend that, in the same PBGC settlement agreement, Delphi agreed, along with the PBGC and GM, that to the extent that the pension benefit claims of the Delphi HRPs' beneficiaries would not be paid in full post-termination, GM would pay the difference as far as the United Auto Worker beneficiaries were concerned. The PBGC settlement agreement also contemplated the possibility that the same GM "top up" treatment would apply to other union member beneficiaries of the Delphi HRP, such as the United Steel Workers and the IUE, which treatment eventually was agreed to by GM.

(The debtor also facilitated the so-called 414(i) transfers of Delphi HRP beneficiaries' liabilities and the associated plan assets to other pension plans sponsored by GM. I do not believe, however, that these latter agreements are being attacked by the splinter unions as a breach of fiduciary

duty, nor do I believe that there would be a basis for such transfers to be attacked.)

The splinter unions' contention is, with regard to the GM "top up" agreement, that Delphi was unfavorably or unfairly permitting certain beneficiaries of its terminated pension plan to receive additional value in the form of the GM backstop and that this constituted a breach of fiduciary duty to the splinter unions' member beneficiaries, who GM did not offer to "top up."

The fiduciary duty of a plan administrator is clearly different than and separate from the obligations of a plan sponsor or the employer that established the plan. It's a fiduciary duty that arises under ERISA, and the parties are generally in agreement that under ERISA a fiduciary is one who exercises authority or control respecting management or disposition of the plan's assets, therefore having control over the operation of the plan, as opposed to the plan's terms.

Delphi's decision to agree with the PBGC to the plan's termination itself is clearly not a basis for a claim against Delphi, as plan administrator, for breach of fiduciary duty under ERISA. That was a plan sponsor function, not a plan fiduciary function; it also was a step the PBGC took on its own. When considering the fiduciary duty claim, the focus would instead need to be upon whether, in administering the plan, Delphi, as plan administrator, breached a fiduciary duty

under ERISA. The two cases cited by the unions in support of their breach of fiduciary duty claim fall into that context. Solas v. Current Development Corporation, 557 F.3d 772 (7th Cir. 2009), involves an administrator's clear self dealing where the trustee "finagled" a plan's termination so that he and his wife would receive more than their fair share as plan participants. In District 65 UAW v. Harper & Row Publishers Inc., 670 F. Supp 550 (S.D.N.Y. 1987), the court found potential breach of fiduciary duty liability with regard to the administrator's use and actual control of the pension plan's assets.

I simply do not see, moreover, how the provisions of the PBGC settlement that contemplated the backstop by GM of unpaid, nonguaranteed liabilities of the beneficiaries who were members of the UAW (and the potential for doing the same for other union beneficiaries) could fall into the category of a breach of fiduciary duty by Delphi as plan administrator. As I noted in connection with the contract portion of my ruling, the amount of payments under the settlement agreement coming from Delphi are not affected by the GM backstop. The GM backstop involves assets of a third party, GM, and GM's agreement, for its own reasons, to supplement what would be available from the PBGC and, therefore, would, to my mind, under no circumstances result in any misuse of the plan's assets or unfair or discriminatory treatment of the HRP's beneficiaries in respect

of those assets by the plan administrator, Delphi.

The allowance of the PBGC's claim in a reduced amount under the PBCG settlement agreement at least does involve, indirectly, the treatment of an asset of the plan (unlike the recognition of the GM backstop in the PBGC settlement), but I believe it does so only superficially and not as a basis for giving rise to a breach of fiduciary duty. By its terms the PGGC settlement agreement was made in contemplation of the PBGC's termination of the Delphi HRP, and the allowance of the PBGC's claim under the settlement agreement was effectively contingent upon such termination. Upon termination, the PBGC would have sole control of that claim. It was the PBGC's claim to assert, defend and maximize. In that context, the PBGC's agreement on the claim's allowance was with Delphi as plan sponsor, not as plan administrator.

I do not believe that Delphi had an obligation to bargain against itself in that context for a higher PBGC claim. Because the claim was controlled by the PBGC under the premises of the settlement agreement, I do not believe, either, that Delphi, as plan administrator, had an obligation to jump up and intervene to insist that the PGBC's claim should be higher. Instead, I believe that, given the context of the settlement agreement, it was proper to look to PBGC, as the owner of the claim, to protect the claim, and that Delphi's potential conflict of interest was therefore mooted by the role that the

PBGC played. Moreover, the PBGC settlement was subject to notice and Court approval, which occurred. It was not a hidden transaction, like the dealings in the cases cited by the unions. Consequently, I do not believe that this aspect of the union's claim sets forth a claim for breach of fiduciary duty, either.

Again, my ruling is based upon the ground rules for a sufficiency hearing under the claims procedures previously adopted in these cases. As I noted during oral argument, I had some suspicions that ultimately the treatment of the PBGC's claim did not leave the three unions' members who were beneficiaries of the Delphi HRP any worse off. But I'm not basing my ruling on that suspiion. In fact, I'm assuming that the claim would always have been at seven billion dollars and was not reduced in light of any other value that would be going to beneficiaries of the plan, from the plan. However, I still do not see how the debtor, as plan administrator, under the circumstances where the PBGC was going to terminate the plan and the amount of the claim was fixed in contemplation of that termination, had an ability, as an ERISA fiduciary, to oppose the PBGC's settlement of the claim at three billion dollars.

So, for each of those alternative reasons I will grant the debtors' objection to the splinter unions' claims to the extent they're based upon an alleged breach of fiduciary duty.

The debtors' counsel should submit an order,

consistent with my ruling, disallowing the claims.